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**In the Supreme Court of the United States**

OCTOBER TERM, 1940

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THE UNITED STATES OF AMERICA AND INTERSTATE  
COMMERCE COMMISSION, APPELLANTS

v.

J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS  
MANHATTAN TRUCK LINES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE EASTERN DISTRICT OF MISSOURI

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STATEMENT AS TO JURISDICTION

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**In the District Court of the United States  
for the Eastern District of Missouri,  
Eastern Division**

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**CIVIL ACTION No. 601**

**J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS  
MANHATTAN TRUCK LINES, PLAINTIFF**

**v.**

**THE UNITED STATES OF AMERICA AND INTERSTATE  
COMMERCE COMMISSION, DEFENDANTS**

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**JURISDICTIONAL STATEMENT BY THE DEFENDANT-  
APPELLANTS UNDER RULE 12 OF THE REVISED RULES  
OF THE SUPREME COURT OF THE UNITED STATES**

**(Filed Mar. 13, 1941)**

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The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed:

**A. Statutory Provisions**

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., title 28, Sec. 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended

by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 85; April 30, 1900, c. 339, Section 86, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

**B. Date of the Judgment or Decree Sought To Be Reviewed and the Date Upon Which the Application for Appeal Was Presented**

The decree sought to be reviewed was entered on January 20, 1941. The petition for appeal was presented on March 13, 1941, together with an assignment of errors.

**C. Nature of Cause and of Rulings Below**

This is an appeal from a decree of the District Court of the United States for the Eastern Divi-

sion of the Eastern District of Missouri entered January 20, 1941, granting the prayer of a complaint which was filed in said court in the above-styled proceeding by the above-named plaintiff under and pursuant to the provisions of Section 41 (28) and Sections 43 to 48, inclusive, of Title 28, U. S. C.

Said complaint prayed that said District Court enjoin, set aside, and annul an order of the Interstate Commerce Commission entered July 1, 1940, in proceedings entitled *Jacob B. Margolies Contract Carrier Application*, No. MC 36692 (reported 24 M. C. C. 121), insofar as said order and its accompanying report found that the said applicant had failed to establish its right to a permit to operate as a contract carrier under the "grandfather" clause of Section 209 (a) of the Motor Carrier Act, 1935, and denied said application. The complaint filed in the above-named District Court alleged, among other things, that the Commission's said order was erroneous in law, and that in the light of the undisputed facts shown in evidence before the Commission, the plaintiff was and is entitled to a permit as aforesaid, and that by reason of the said order of the Commission the plaintiff would suffer great irreparable injury to its business.

The case was heard upon final hearing before a court of three judges organized pursuant to U. S. C. Title 28, Section 47 (Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220). A transcript

of all the evidence received before the Interstate Commerce Commission, duly certified by the Secretary of the Commission, was received in evidence before said court. Thereafter, on January 14, 1941, the court rendered its opinion holding that the prayer of the complaint should be granted, and made its findings of fact and conclusions of law, and on January 20, 1941, the court entered the final decree sought to be reviewed.

The questions presented by this appeal are substantial. They involve the duties and powers of the Interstate Commerce Commission with respect to the issuance of permits for contract carriers under the so-called "grandfather" clause of Section 209 of the Motor Carrier Act, 1935. They also involve the duties and functions of the District Court with regard to the weighing of evidence heard by the Interstate Commerce Commission in suits involving the validity of the action of the Commission in denying or granting applications for contract carrier permits under said "grandfather" clause.

#### **D. Cases Sustaining the Supreme Court's Jurisdiction on Appeal**

*United States v. Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499.

*United States v. Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

*Florida v. United States*, 282 U. S. 194.

*Beaumont, Sour Lake & Western Ry. Co. v. United States*, 282 U. S. 74.

*Ann Arbor Railroad Co. v. United States*, 281 U. S. 658.

*Louisville & Nashville R. R. Co. v. United States*, 238 U. S. 1.

*Interstate Commerce Commission v. Union Pacific Ry. Co.*, 222 U. S. 541.

*United States v. Maher*, 307 U. S. 148.

#### E. Decree and Opinion of the District Court

Appended to this statement is a copy of the opinion of the District Court with its findings of fact and conclusions of law and a copy of the decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated MARCH 12, 1941.

Respectfully submitted.

↓ FRANCIS BIDDLE,  
*Solicitor General*,

↓ HARRY C. BLANTON,  
*United States Attorney*,

↓ THURMAN ARNOLD,  
*Assistant Attorney General*,

↓ FRANK COLEMAN,  
*Special Assistant to the Attorney General*,  
*For the United States of America.*

DANIEL W. KNOWLTON,  
*Chief Counsel*,

↓ NELSON THOMAS,  
*Attorney*,

*For the Interstate Commerce Commission.*

The opinion of the District Court is printed as an appendix to the Jurisdictional Statement in the case of *United States v. N. E. Rosenblum Truck Lines, Inc.*, No. 970, October Term, 1940, and is not repeated here.

**In the District Court of the United States  
for the Eastern Division of the Eastern  
District of Missouri**

---

No. 601

**J. B. MARGOLIES, AN INDIVIDUAL DOING BUSINESS AS  
MANHATTAN TRUCK LINES, PLAINTIFF**

**v.**

**UNITED STATES OF AMERICA AND THE INTERSTATE  
COMMERCE COMMISSION, DEFENDANTS**

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Before Joseph W. Woodrough, Circuit Judge,  
Charles B. Davis and George H. Moore, District  
Judges, on application for injunction.

**FINDINGS OF FACT**

1. That plaintiff, a resident of Missouri, is successor in interest to Truman E. Baulos, an individual heretofore doing business as the Truman E. Baulos Truck Lines. Plaintiff brings this action under Sections 24 and 209 of the Judicial Code (28 U. S. C. A., Sections 41, 43, 44, and 45) to review, enjoin, suspend, and set aside an order of the Interstate Commerce Commission entered on July 1, 1940, in a proceeding entitled MC 36692, Jacob B. Margolies (Successor in Interest to Truman E. Baulos), Contract Carrier Application, wherein applicant was denied a certificate of public convenience and necessity or a permit authorizing con-



tinuance of operations as a common or a contract carrier by motor vehicle of general commodities, in interstate or foreign commerce, between St. Louis, Mo., and Chicago, Ill., over three specified routes.

2. That the Commission concluded from the evidence that: "It is clear from the record, and we so conclude, that applicants' equipment prior to February 1936 was operated solely under the direction and control of the common carriers and under the latter's responsibility to the general public and to the shippers. As to such operations, applicants do not qualify as carriers by motor vehicle within the meaning of the act and are consequently not entitled to a certificate or a permit under the 'grandfather' clause of section 206 (a) or 209 (a) thereof."

3. That Baulos, prior to July 1, 1935, was employed as office manager and dispatcher for E. H. Hoffmann Lines, Inc., a motor carrier operating between St. Louis and Chicago. Later, in October 1935, Baulos was employed by Be-Mac Transport Company, Inc., as its Chicago office manager, on a salary basis, and from that time until February 1936 he operated vehicles for that company under arrangements similar to those formerly had with the Hoffmann company. While employed by Hoffmann, Baulos acquired three tractor-trailer units prior to July 1, 1935, and transported freight as a regular occupation or business between the points in question principally for the Hoffmann company, at a truckload price per trip. There was some

evidence of similar transportation for Be-Mac, Ill.-Mo. and Transamerican Freight Lines, Inc. Fire, theft and collision insurance on the tractor-trailer units was taken out by Baulos, and public liability and property-damage insurance was either taken out by the common carrier and charged to the account of Baulos, as shown in the exhibits, or was handled by the finance company through which Baulos arranged the purchase of his equipment. The evidence did not show which party carried cargo insurance, the witness testifying that this was the subject of a lawsuit at the time. Baulos testified that he at all times had complete control and supervision of the trucks and the drivers. This was not disputed insofar as the Hoffmann company was concerned, though a witness from Be-Mac testified that the latter exercised such control over trucks operated for them by Baulos. On numerous occasions prior to July 1, 1935, as well as subsequent thereto, Baulos carried fractional truck loads for the Hoffmann company, filling out the loads with cargo for other companies. Registration on the tractor-trailer units was taken out with the state authorities by Baulos. Drivers of the trucks were employees of Baulos, who paid their salaries, as well as all expenses of maintenance and upkeep on the equipment and costs of travel. The usual compensation to Baulos was \$30.00 gross for a one-way trip between the points, but this was subject to change on any particular trip, depending on the weight of the load and the profits.

4. That prior to July 1, 1935, and since that time, Baulos' equipment was operated principally under his own direction and control, and on his own responsibility.

#### CONCLUSIONS OF LAW

1. That this Court has jurisdiction to entertain plaintiff's petition to enjoin the enforcement of and to set aside the order of the Interstate Commerce Commission of July 1, 1940, denying the plaintiff a certificate of convenience and necessity or permit.

2. That plaintiff or its predecessor was in bona fide operation as a contract carrier in interstate commerce on July 1, 1935, over the routes for which application is made, and has so operated since that time; that plaintiff in so operating assumed control, management, and responsibility for the hauling of cargo.

3. That there is no substantial evidence in the record to support the order entered, and that plaintiff is entitled to an order enjoining, suspending, and setting aside the order of the Interstate Commerce Commission.

(s) J. W. WOODROUGH,  
*United States Circuit Judge.*

(s) CHARLES B. DAVIS,

(s) GEO. H. MOORE,  
*United States District Judges.*

**In the District Court of the United States  
for the Eastern Division of the Eastern  
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No. 601

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*v.*

**UNITED STATES OF AMERICA AND THE INTERSTATE  
COMMERCE COMMISSION, DEFENDANTS**

---

Before Hon. Joseph W. Woodrough, United States Circuit Judge, Hon. Charles B. Davis, United States District Judge, and Hon. George H. Moore, United States District Judge, sitting as the District Court of the United States for the Eastern District of Missouri, pursuant to the provisions of Sections 208 and 209 of the Judicial Code, 28 U. S. C. A. 44, 45, and 47.

**FINAL DECREE AND JUDGMENT**

This cause came on for hearing on the complaint of the plaintiff on December 9, 1940, when the plaintiff appeared by its solicitors of record, the United States of America and the Interstate Commerce Commission appeared by their respective solicitors of record, and, the transcript of proceed-

ings and evidence had and presented before the Interstate Commerce Commission on plaintiff's application to the Commission for a permit to continue in business as a contract carrier of freight by motor vehicle, was by the plaintiff offered in evidence, the defendant admitting that said transcript contained a complete record of all the evidence presented therein before the Interstate Commerce Commission, and the cause was presented by the parties to the Court for determination, under the pleadings filed and the proof then adduced and the arguments of the parties, as well as briefs thereafter filed by the parties.

And, the Court being fully advised in the premises, and having filed herein on January 14, 1941, its findings of fact and conclusions of law as well as its written opinion holding that there is no substantial evidence in the record of proceedings before the Interstate Commerce Commission to support the findings and conclusions on which the order of the Commission is based, and that the Commission by said order erred in its conclusion of fact and in the application of the controlling law, and that because of said erroneous finding, conclusion, and order the plaintiff is entitled to have said order enjoined, annulled, and set aside; now,

THEREFORE, IT IS ADJUDGED AND DECREED that the order of the Interstate Commerce Commission made July 1, 1940, in the proceeding before said Commission entitled "No. MC-36692, Jacob B.

Margolies, Contract Carrier Application, St. Louis, Missouri," denying the application of Jacob B. Margolies, doing business as Manhattan Truck Lines, for a certificate or permit as a contract carrier be and it hereby is annulled and set aside, and defendants are enjoined from enforcing or attempting to enforce said order.

Done this 20th day of January 1941.

For the Court:

GEO. H. MOORE, *Judge.*